

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDGAR J. DIETRICH,

Plaintiff,

v.

Case No.: 15-13820
Honorable Gershwin A. Drain

2010-1-CRE MI-RETAIL, LLC,

Defendant.

ORDER DENYING APPLICATION TO PROCEED
IN FORMA PAUPERIS ON APPEAL[#57]

Presently before the Court is Plaintiff's Application to Proceed on Appeal *In Forma Pauperis*, filed on November 10, 2016. On October 25, 2016, this Court entered an Order Granting the Defendant's Motion for Summary Judgment. Thereafter, on October 27, 2016, the Court entered an Order denying Plaintiff's Motion for Summary Judgment. Plaintiff filed a Notice of Appeal on November 7, 2016.

Federal Rule of Appellate Procedure 24(a)(3) states:

(3) *Prior Approval.* A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court— before or after the notice of appeal is filed — certifies that the appeal is not taken good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3). “Good faith” requires a showing that the issues are arguable on the merits and are, therefore, not frivolous; it does not require a showing of probable success. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition must be granted.” *Id.* “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” *Braley v. Campbell*, 832 F.2d 1504, 1510 (10th Cir. 1987).

Here, the Court concludes that the appeal is not taken in good faith. Plaintiff fails to raise any arguments in support of his appeal. This Court thoroughly reviewed Plaintiff’s case and determined that all of Plaintiff’s claims are subject to dismissal under Rule 56 of the Federal Rules of Civil Procedure. Defendant is a limited liability company, thus it cannot be liable under 42 U.S.C. § 1983. Moreover, Plaintiff cannot establish a conversion claim since the dominion exerted by the Receiver, who was appointed by the Wayne County Circuit Court, was not

wrongful and was exerted over real property, and not personal property. Lastly, Plaintiff cannot establish an abuse of process claim where he merely seeks to collaterally attack the decisions of the Wayne County Circuit Court. Plaintiff was a non-party to that litigation and therefore had no legal interest in the proceedings. As such, Plaintiff's conclusory arguments that this Court committed error are wholly without merit. *Braley*, 832 F.2d at 1510.

Accordingly, for the foregoing reasons, the Court concludes that Plaintiff's appeal is not taken in good faith and his Application to Proceed *In Forma Pauperis* on Appeal [#57] is DENIED.

SO ORDERED.

Dated: November 28, 2016

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 28, 2016, and on Edgar J. Dietrich at 15832 Windmill Pointe, Grosse Pointe, MI 48230, by electronic and/or ordinary mail.

/s/ Tanya Bankston
Deputy Clerk